

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ OCT 05 2015 ★

LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
GUILLERMO MORAN, on behalf of himself and all others
similarly situated,

Plaintiff,

15-CV-00043 (SJF) (GRB)

-against-

PAUL COMO SWIMMING POOLS INC. d/b/a
POOL DOCTOR and PAUL ANTHONY COMO, JR.,

ORDER

Defendants.
-----X

On January 6, 2015, Plaintiff Guillermo Moran brought this action against Paul Como Swimming Pools Inc. d/b/a Pool Doctor and Paul Anthony Como, Jr. (collectively "Defendants"). Plaintiff, who was an employee of Defendants, alleges that Defendants violated the Fair Labor Standards Act ("FLSA") and the New York Labor Law ("NYLL") by failing to pay overtime wages when he worked more than 40 hours per week.

On March 30, 2015, Plaintiff served a motion for an order authorizing Plaintiff to circulate a notice of pendency and consent to join form pursuant to 29 U.S.C. §216(b) and compelling Defendants to furnish the names, last known addresses, telephone numbers and dates of employment for all current and former employees who performed non-exempt work during the six years period preceding the commencement of the action.

On September 17, 2015, the parties appeared before the Court for a status conference, at which time they indicated to the Court that they stipulate to the circulation of the notice of pendency and consent to join form.

Accordingly, the Plaintiff's motion for conditional certification is **GRANTED**, on consent.

IT IS ORDERED, that the notification process shall proceed as follows:

1. Defendants shall provide to Plaintiff the names, addresses, telephone numbers and dates of employment of all non-exempt employees who worked for Defendants at any time between January 6, 2009 and present within fourteen (14) days of the date of this Order;

2. Within fourteen (14) days after Plaintiff's counsel receives the list of Defendants' current and former employees, Plaintiff's counsel shall mail the attached Notice of Pendency and Consent to Join Form in both the English and Spanish language to each individual on the list;

3. The individuals to whom the notice is mailed shall have sixty (60) days from the date on which the notice was mailed to them to ensure their Consent to Join Form is filed with the Court. Individuals whose initial notice is returned to Plaintiff's counsel as undeliverable shall have five (5) additional days to ensure their Consent to Join Form is filed with the Court.

Dated: Central Islip, New York
October 5, 2015

~~SO ORDERED~~
S/Sandra J. Feuerstein
U.S.D.J.

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-----X
GUILLERMO MORAN, on behalf of himself and all others
similarly situated,

Plaintiff,

15-CV-00043 (SJF) (GRB)

-against-

NOTICE OF PENDENCY

PAUL COMO SWIMMING POOLS INC. d/b/a
POOL DOCTOR and PAUL ANTHONY COMO, JR.,

IMPORTANT NOTICE
ABOUT YOUR
LEGAL RIGHTS

Defendants.
-----X

PLEASE READ THIS NOTICE CAREFULLY. THIS COULD AFFECT YOUR LEGAL RIGHTS.

1. YOU MAY HAVE THE RIGHT TO JOIN THIS COLLECTIVE ACTION SUIT

Former employee, GUILLERMO MORAN, on behalf of himself and all others similarly situated, (collectively, "plaintiffs") have brought this lawsuit against PAUL COMO SWIMMING POOLS INC., d/b/a POOL DOCTOR and PAUL ANTHONY COMO, JR., (collectively, "defendants" or "Pool Doctor"), alleging that they violated the overtime pay and minimum wage provisions of the Fair Labor Standards Act (FLSA). The lawsuit seeks back pay and liquidated damages from the defendants, as well as costs and attorneys' fees to compensate eligible employees.

Defendants deny the allegations made by the plaintiff, and deny that they are liable to plaintiff for any back pay, damages, costs or attorneys' fees sought.

The Judge has not yet decided who is right and who is wrong, but is giving the opportunity to all those employees who are potentially similarly situated to plaintiff and who might have been affected by these alleged violations to join this collective action suit.

2. YOUR RIGHT TO PARTICIPATE IN THIS SUIT

If you worked for Defendants during the period of January 6, 2012 until now, you may join this lawsuit by mailing the "Consent to Join Form" in the enclosed self-addressed stamped envelope to plaintiffs' counsel at the following address:

Peter A. Romero, Esq.
FRANK & ASSOCIATES, P.C.
500 Bi-County Boulevard, 112N
Farmingdale, New York 11735
(631) 756-0400

You have a right to participate in this lawsuit regardless of your immigration status, even if you are an undocumented alien.

You also have the right to consult with an attorney of your choice.

If you decide to join, you must send the form on or before [insert date – 60 days from the date of mailing]. After such date, you may not be able to participate in this lawsuit.

3. NEW YORK LAW CLAIMS

A class has not yet been certified for claims arising under New York law. Under New York law, you may have claims for overtime compensation (work performed over 40 hours) and spread-of-hours compensation (work performed in excess of 10 hours per shift) that date back to January 6, 2009. You will be advised of any additional rights that you may have to recover under New York law in the event that a class is certified by this Court.

4. EFFECT OF JOINING THIS LAWSUIT

If you choose to join this lawsuit, you will be bound by any decision of the Court, judgment of the Court, or settlement, whether favorable or unfavorable.

By completing and timely returning the Consent to Join form, you are agreeing to have plaintiff GUILLERMO MORAN act as your agent to make decisions on your behalf concerning this lawsuit.

The plaintiff's attorneys are being paid on a contingency fee basis, which means that if there is no recovery, they will not receive any attorneys' fees. If the plaintiff prevails and there is recovery, the Court will decide the amount of fees to be paid to the attorneys.

5. EFFECT OF NOT JOINING THE LAWSUIT

If you choose not join this lawsuit, you do not need to do anything. If you do not join the lawsuit, you will not be affected by any judgment or settlement rendered in the lawsuit, whether favorable or unfavorable, and you remain free to file your own lawsuit under the FLSA.

6. YOUR LEGAL REPRESENTATION IF YOU JOIN

If you choose to join this lawsuit, and agree to be represented by the plaintiffs' attorneys, your counsel in this action will be:

**Peter A. Romero, Esq.
FRANK & ASSOCIATES, P.C.
500 Bi-County Boulevard, 112N
Farmingdale, New York 11735
(631) 756-0400**

You have the right to retain your own counsel.

NO RETALIATION PERMITTED

Federal law prohibits your employer from firing or in any other manner discriminating against you because you decided to join this lawsuit.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT WITH ANY QUESTIONS ABOUT THIS LAWSUIT.

Dated: 10/5/15

12 **SO ORDERED:**
s/Sandra J. Feverstein
U.S.D.J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
GUILLERMO MORAN, on behalf of himself and all others
similarly situated,

Plaintiff,

15-CV-00043 (SJF) (GRB)

-against-

CONSENT TO JOIN

PAUL COMO SWIMMING POOLS INC. d/b/a
POOL DOCTOR and PAUL ANTHONY COMO, JR.,

Defendants.
-----X

I wish to participate in the Fair Labor Standards Act case filed by Guillermo Moran against Paul Como Swimming Pools Inc. d/b/a Pool Doctor and Paul Anthony Como, Jr. By signing below I consent to become a party plaintiff in this lawsuit brought under the federal Fair Labor Standards Act of 1938, as amended 29 U.S.C. §201 et seq. to recover unpaid overtime wages owed for weeks in which I worked more than forty (40) hours. I agree to be bound by any judgment herein, favorable or unfavorable. I hereby authorize the law firm of Frank & Associates, P.C. to represent me in this case.

Printed Name

Signature

Address:

